

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

ANTHONY V. FAIL,

Plaintiff,

vs.

WEST VALLEY MUNICIPAL CITY, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL

Case No. 2:05-CV-947 TS

Plaintiff, Anthony V. Fail, has filed an amended *pro se* civil rights complaint.

Defendants have filed a Motion to Dismiss. Plaintiff has filed a memorandum in opposition to Defendants' Motion to Dismiss and has now filed a Request for Appointment of Counsel. In that Request, Plaintiff states that he is unemployed and does not have money to hire counsel. He also states that he is "unqualified to manage the needs of dealing with the opposition in this case."

Plaintiff has no constitutional right to counsel.¹ The Court may appoint counsel in its discretion.² “The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.”³

When deciding whether to appoint counsel, the Court should consider a number of factors, “including ‘the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present his claims, and the complexity of the legal issues raised by the claims.’”⁴

Considering the factors listed above, the Court concludes that it is not clear at this point whether Plaintiff’s claims have merits. The Court notes that the factual and legal issues raised in Plaintiff’s claims are not complex. Further, the Court finds that Plaintiff has the ability to present his claims, despite his statements to the contrary. Plaintiff has, to this point, filed a Complaint, amended that Complaint, and has responded to Defendants’ Motion to Dismiss. For these reasons, the Court denies Plaintiff’s Motion for Appointment of Counsel.

¹See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

²*Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

³*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

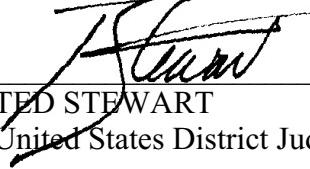
⁴*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996).

It is therefore

ORDERED that Plaintiff's Motion for Appointment of Counsel (Docket No. 11) is DENIED.

DATED January 4, 2006.

BY THE COURT:



TED STEWART
United States District Judge